

detail in the reply affidavit of Alphonso Varner, only AT&T and ITC^DeltaCom now claim that BellSouth's data are unreliable, and those two parties' arguments do not come close to establishing the kind of "systematic failure" that would be necessary to reject reliance on BellSouth's comprehensive metrics reports. *Arkansas/Missouri Order* ¶¶ 18-19 (rejecting claims about alleged unreliability of SWBT's "massive data compilation" where there was no showing of such a systematic problem); *see also New Jersey Order* ¶ 91 n.248.

The only data issue that DOJ recommends that this Commission review involves advance notification of changes. DOJ expresses concern that, in upgrading from PMAP Version 2.6 to PMAP Version 4.0, BellSouth provided notifications that, in DOJ's view, may not have ensured a "meaningful opportunity for comment and adequate time for state commissions to consider issues raised." *DOJ Eval.* at 14. DOJ does not contest that the changes that BellSouth made were appropriate, or that they corrected prior errors. On the contrary, it acknowledges that this upgrade appears to be a "positive development." *Id.* at 13.

DOJ's concern has been fully addressed. As an initial matter, as described in the reply affidavit of Alphonso Varner (¶¶ 13-14), BellSouth believes that it has previously provided appropriate notice of changes – especially because there was no formal notification process in place at the time to guide BellSouth. In any event, that issue is now moot. The Georgia Commission, after receiving significant input from CLECs, has adopted BellSouth's proposed expanded notification process, with some modifications. The Georgia Commission has ordered the following:

- On the first business day of the month preceding the data month for which BellSouth proposes to make any change to the method by its performance data is calculated, BellSouth will provide written notice of any such proposed changes (hereinafter referred to as "Proposed Data Changes"). This notice will identify the affected measure(s), describe the proposed change, provide a reason for the proposed change, and outline its impact. At the same time BellSouth will provide

written notice of any known changes BellSouth is considering making to the method of calculating performance data for the following data month (hereinafter referred to as "Preliminary Data Changes"). This written notice shall be served electronically on parties and be posted on the PMAP website.

- No later than four business days after the written notice referenced above has been provided, BellSouth will conduct an industry conference call at which time affected parties as well as the Commission can ask questions about either the Proposed Data Changes or the Preliminary Data Changes. The call will be conducted from 2:00 to 5:00 p.m. (Eastern Time).
- No later than 10 business days after the industry conference call, affected parties must file written comments with the Georgia Commission to the extent they have objections or concerns about the Proposed Data Changes. These comments shall be served electronically on parties, and BellSouth will have the opportunity to file a response, if necessary.
- The Proposed Data Changes set forth in the written notice referenced above would be presumptively valid and deemed approved by the Commission effective 30 calendar days after that notice, unless the Commission staff directs BellSouth not to go forward with the changes.

BellSouth Varner Reply Aff. ¶ 8.

BellSouth already has implemented the formal notification process adopted by the Georgia Commission, and has followed the procedures required by it in issuing three data notification letters. *See id.* ¶¶ 10-12 & Exhs. PM-3, PM-4 & PM-5. Moreover, BellSouth is now following this notification process in all five states at issue here. The notification process ensures that CLECs and regulators throughout BellSouth's region have sufficient advance notice to react to any proposed changes to the calculation of BellSouth's performance data and should alleviate any concern about BellSouth unilaterally changing its measurement calculations. *See id.* ¶ 10.

Importantly, DOJ itself has indicated that these new procedures should address its concern. DOJ states that these new requirements "will, with the necessary monitoring, *prevent the further recurrence of undisclosed, unapproved metrics changes.*" *DOJ Eval.* at 14 (emphasis added, footnote omitted). BellSouth agrees that this process ensures full disclosure of metric changes, and thus satisfies any conceivable issue here.

AT&T complains of BellSouth's alleged failure to engage in data reconciliations. *See AT&T Comments* at 23-24. The facts tell a different story. *See BellSouth Varner Reply* ¶¶ 15-21. During 2002, AT&T has sent 10 letters and 15 emails generating 55 requests regarding performance data. *See BellSouth Varner Reply* ¶ 17. Responses have been provided to all of those requests, with the last seven items provided to AT&T in a meeting on July 23, 2002. *See id.* In addition, the same BellSouth employees that respond to performance data requests have spent 15 full days assisting AT&T with on-site reviews of SEEM data. In those reviews, AT&T has raised seven issues, and six of them have been resolved. For the resolved issues in the SEEM reviews, BellSouth researched thousands of transactions raised as issues by AT&T, and no discrepancies were found. *See id.*⁷

⁷ DeltaCom's arguments on this point are also unpersuasive. In response to a DeltaCom inquiry, BellSouth invited DeltaCom to review SEEM reports and how they are calculated. On January 28, 2002, a team of managers from DeltaCom met with BellSouth Subject Matter Experts to address questions they had on SEEM calculations and results. A follow-up meeting was held on March 6. A subsequent meeting was scheduled in April 2002 to address PMAP issues that DeltaCom raised for the first time at the March meeting. DeltaCom postponed this meeting and added several more reports to its list to be recreated. During the next few weeks, as DeltaCom and BellSouth tried to agree upon a mutual meeting date, DeltaCom again added several more reports to the list to be reviewed. Because the list of reports to be covered had grown so extensively, BellSouth asked DeltaCom to identify specific issues for discussion at the meeting so that we could be productive in addressing DeltaCom's concerns. BellSouth asked DeltaCom to provide specific issues, reports, and months so that BellSouth could investigate these issues prior to more meetings. To date, BellSouth has not received any lists of specific issues to address and, therefore, a follow-up meeting for these PMAP issues has not been scheduled. Thus, although DeltaCom alleges that BellSouth's PMAP reports have data integrity issues, it has not given BellSouth a single specific example that BellSouth could investigate. BellSouth continues to offer DeltaCom the opportunity to present specific issues for discussion and will investigate and meet with DeltaCom if necessary to review the findings once the specific issues are received. *See BellSouth Varner Reply Aff.* ¶¶ 23-24.

Nor is there merit to AT&T's claim that BellSouth's performance data are "riddled with error." *AT&T Comments* at 25. In fact, there is even greater reason to rely upon BellSouth's data now than there was at the time of the Georgia/Louisiana proceeding. The third Georgia metrics audit has progressed even further – and has now reviewed data generated using the new PMAP Version 4.0 – and neither that test nor the Florida audit has resulted in findings of significant data concerns. *See BellSouth Varner Reply Aff.* ¶¶ 72-87. Of the open exceptions and draft exceptions in Audit III in Georgia, only has a greater than 0.5% impact on reported results. *See id.* ¶ 81. Additionally, with these reply comments, BellSouth is submitting a PwC audit of PMAP 4.0 performance data for line-sharing, xDSL, and local interconnection trunks that confirms the reliability of the data. *See id.* ¶¶ 88-91.

The commissions in all five of the states covered by this Application also have determined that BellSouth's data provide a meaningful yardstick to measure BellSouth's performance. For instance, the NCUC has explained that it "agrees with BellSouth that it is reasonable to rely on its data and reporting," and that the monitoring systems in place "are at least as stringent as those found by the FCC to be satisfactory in New York." *NCUC Order and Advisory Opinion* at 160. The NCUC further noted that the errors identified by CLECs are not "systemic" but rather "appear to be isolated incidents that BellSouth either has resolved or is working to resolve." *Id.* The Mississippi PSC has similarly stated that, although "no data collection the size of the SQM can be perfect," "existing data issues are minor" and there are "extensive external and internal checks on the reliability of BellSouth's data." *MPSC Consultative Report* at 9.

Moreover, on their face, AT&T's arguments fail to demonstrate systemic flaws in BellSouth's data. All of AT&T's arguments are rebutted in detail in the reply affidavit of

Alphonso Varner, but it should be noted here that AT&T's arguments are generally based on misunderstandings of the SQM, have been corrected, and/or involve issues of very minor impact on the overall performance data. For instance, AT&T complains about an issue with LNP flow-through that would have less than a 0.1% effect on results and argues about another issue that affected raw data on some orders but had no effect on measurement results. *See BellSouth Varner Reply Aff.* ¶¶ 33, 44. These issues, and the others covered in the Varner reply affidavit, do not show anything like a systemic problem with BellSouth's data, particularly in light of the audit results and other checks on data reliability that this Commission properly emphasized in the Georgia/Louisiana proceeding. *See GA/LA Order* ¶ 19.

III. THE STATE COMMISSIONS COMMITTED NO CLEAR TELRIC ERRORS IN ESTABLISHING UNE RATES

BellSouth demonstrated in its Application that the cost models and pricing methodologies used in these five states are the same ones that the Commission reviewed and approved in the Georgia/Louisiana proceeding. *See Application* at 43. BellSouth further established that, as in Georgia and Louisiana, the state commissions in these five states have demonstrated a commitment to TELRIC rates and have held open proceedings in which CLECs could participate fully and challenge any aspect of BellSouth's methodology as inconsistent with TELRIC. *See id.* at 45-59.

Despite these showings, AT&T and WorldCom, the two largest long-distance incumbents, take issue with these state commission decisions. However, almost without exception, their claims are either (1) the same ones that the Commission expressly rejected in the

Georgia/Louisiana proceeding, or (2) were never made before any of the state commissions in the rate proceedings at issue here.⁸

It should go without saying that claims that are contrary to this Commission's precedent lack merit. It is similarly clear that the Commission should not overturn the reasoned judgments of state commissions on fact-intensive, technical cost issues based on arguments that were never made to those expert bodies. "[I]t is both impracticable and inappropriate for us to make many of the fact-specific findings the parties seek in this section 271 review, when many of the [state commission's] fact-specific findings have not been challenged below." *Vermont Order* ¶ 20. If AT&T or WorldCom believed that the rates at issue were in fact inconsistent with competition in any particular state, they would, could, and should have raised them in the appropriate state proceeding. The fact that AT&T and WorldCom have sought instead to raise these issues in this proceeding makes plain that they are not concerned about any alleged effects of these rates on competition in local markets, but rather are simply engaging in an anticompetitive attempt to hinder BellSouth's long-distance entry. These tactics should not be allowed.

In any event, none of the claims that these parties have raised comes close to establishing the kind of extreme error by the expert state commissions that would warrant a finding of checklist noncompliance. As the Commission has explained, it "will reject the application only if *basic TELRIC principles are violated* or the state commission makes *clear errors* in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." *New York Order* ¶ 244 (emphases added);

⁸ US LEC purports to raise a claim about BellSouth's signaling rates, but it challenges signaling costs for switched access, not UNEs. See *BellSouth Ruscilli/Cox Reply Aff.* ¶¶ 45-46 (Reply App. Tab F). Access service is not a part of the competitive checklist. See *New York Order* ¶ 340.

see also *Massachusetts Order* ¶ 20; *KS/OK Order* ¶ 59; *Pennsylvania Order* ¶ 55. The reasonableness of the state commissions' conclusions are established in detail in the reply affidavits of Daonne Caldwell and John Ruscilli/Cynthia Cox. BellSouth elaborates on some of the key errors in the AT&T/WorldCom arguments below.

Switch Discounts and Related Arguments. In the Georgia/Louisiana proceeding, as in some state proceedings in the BellSouth region, AT&T claimed that the switch discounts used in computing BellSouth's rates were inappropriate because they considered the discounts that vendors offered on both new and growth switches. The Commission squarely rejected AT&T's argument there, as it had in several other prior section 271 proceedings. See *GA/LA Order* ¶¶ 78-84 (citing prior precedent and finding state commissions' adoption of BellSouth's methodology to be "reasonable").

Although AT&T briefly recycles this same claim that only new-switch discounts should be considered – a claim that should be rejected for the same reasons as in the *GA/LA Order* and prior decisions – this time its argument focuses on a few fact-intensive aspects of BellSouth's methodology in determining appropriate switch discounts. See *AT&T Comments* at 37; *AT&T Pitts Decl.* ¶¶ 4-16.

AT&T first argues that BellSouth erred in using actual jobs in determining the switch discount and that the particular mix of new and growth switches that BellSouth used is improper. See *AT&T Pitts Decl.* ¶¶ 6-8. Neither of these fact-specific claims regarding BellSouth's pricing methodology was raised before any of the state commissions. See *Caldwell Reply Aff.* ¶¶ 63, 68 (Reply App. Tab B). The Commission should reject AT&T's arguments for this important reason alone. As discussed above, it is impossible to imagine that BellSouth's choices on these complex modeling issues involved a "basic TELRIC error," if neither AT&T nor any other party

ever saw fit to raise these questions before any of these five state commissions. Moreover, it is fundamentally inconsistent with the deferential review required under this Commission's precedent for the Commission to evaluate issues on which the state commission never had an opportunity to rule. See *Vermont Order* ¶ 20 (where parties raise pricing issues for the first time at the federal level, that improperly requires the Commission to resolve "a number of complex and fact-specific issues" on "cost study inputs on the basis of conflicting assertions by the parties that they did not make in the [state] rate proceeding"). At the very least, a TELRIC error would have to be "patent" – involving, for instance, exclusive reliance on 1990 historical cost data for a key cost component (say, loop material costs) without any reason to believe that that data would also reflect forward-looking costs – for the Commission to find a checklist issue in such circumstances. *Id.* n.69.

In any event, AT&T is flatly wrong on both points. First, one cannot determine the appropriate level of switch discounts directly from the vendor contracts because those agreements do not contain the necessary amount of detail. Accordingly, "[u]sing actual billed data" for jobs worked under these agreements "instead of arbitrarily pulling select contract prices," "is the more accurate methodology." *BellSouth Caldwell Reply Aff.* ¶ 71. Nor does such a methodology lead to rates that exceed the contract prices, as AT&T's Ms. Pitts claims. See *AT&T Pitts Decl.* ¶ 6. AT&T's argument on this point ignores the fact that the "equivalent lines" in the contract are not the same as the line count entered into the SCIS/MO cost model. *BellSouth Caldwell Reply Aff.* ¶ 72. AT&T is thus not comparing apples to apples, and its assertion is invalid.

Similarly, contrary to AT&T's argument, BellSouth properly based its meld percentages on the number of lines projected to be purchased in the timeframe of the cost study. Those data

reflect what BellSouth will pay on a forward-looking basis. *See id.* ¶¶ 75-77. Such an approach is not only a reasonable way to ascertain forward-looking costs; it also avoids the need to make assumptions about the life of the switch, annual growth rates, and other variables. *See id.* Indeed, Ms. Pitts's unsupported and unrealistic assumptions regarding a 3% growth rate demonstrate the dangers in this alternative approach and confirm that BellSouth committed no clear TELRIC error in using a different methodology. *See id.* ¶ 75 & n.11. Such unsupported claims are not sufficient to demonstrate clear error by a state commission. *See, e.g., GA/LA Order* ¶ 75.

AT&T also raises for the first time here a fact-based argument regarding BellSouth's alleged error in not assuming the use of a "Digital Network Unit – SONET" ("DNUS") trunk component. *See BellSouth Caldwell Reply Aff.* ¶ 78. Again, this claim is not only procedurally improper, but also incorrect. In fact, the DNUS is not the most forward-looking technology for all trunk terminations because it is a high-capacity interface. In instances where the yearly growth rate justifies such a high-capacity interface, BellSouth assumes DNUS use. *See id.* ¶¶ 78-81. This methodology is again appropriate, and certainly does not constitute a patent error, or in fact any error.

AT&T's claim regarding the modeling assumption that all end-office switches are local/tandems also was not presented to the state commissions and, in any event, is wrong. *See id.* ¶ 82. While this modeling convention in the Telcordia SCIS model does have a very small impact on rates, it actually *decreases* costs. *See id.* ¶¶ 82-83.

Finally, AT&T is simply wrong in asserting that BellSouth inappropriately allocates fixed costs to usage-based charges. *See AT&T Pitts Decl.* ¶¶ 11-16. As Daonne Caldwell explains (¶¶ 86-99), BellSouth's allocation methodology was reasonable – and at the least involved no

clear TELRIC error – and the result in all these states (traffic sensitive/non-traffic sensitive ratios between 68%/32% and 72%/28%) is consistent with the allocation ratios that the Commission has previously approved. *See id.* ¶ 96; *Maine Order* ¶ 29 (approving a 70%/30% ratio as “reasonable” and noting that “AT&T’s own comments demonstrate that switching cost allocations may vary”).

Switch Feature Costs. AT&T also takes issue with the details of the methodology that BellSouth has used to determine incremental costs associated with access to all the features on a switch. *See AT&T Pitts Decl.* ¶¶ 17-21.

Again, AT&T’s arguments were never presented to the state commission in any of the relevant states. *See BellSouth Caldwell Reply Aff.* ¶ 100. As BellSouth has explained above, that fact is crucial to the Commission’s analysis of any pricing complaint in a section 271 proceeding. It is especially critical in the context of this specific argument, however, because – in contrast to its position before the states – AT&T no longer is simply arguing that features do not create incremental costs. Rather, AT&T has now conceded that point, and is challenging BellSouth’s reasonable and good-faith attempt to make an estimate of the precise quantum of costs that will be created by future feature usage by CLEC customers. Estimating the forward-looking costs of features is a complex endeavor for which there are no clear guidelines. In such cases, it is particularly “impracticable and inappropriate,” *Vermont Order* ¶ 20, for the Commission to evaluate the competing arguments without the benefit of a factual record developed before a state commission, and a state commission decision explaining the particular result that it reached. *See id.* ¶ 31 (where no party had raised a claim as to a complex switching issue, the record was “insufficient for [the Commission] to conclude that the Vermont Board committed error”). Put differently, AT&T is necessarily asking the Commission to make precisely the kind of *de novo*

inquiry that the Commission has correctly concluded would be improper, and is doing so in an exceedingly complex pricing area where such an inquiry would be particularly difficult even without the time constraints created by a section 271 proceeding. At a minimum, the Commission must rigorously apply its standard that, in such a context, it will limit its review to whether a “patent” TELRIC violation exists. *Id.* ¶ 20 n.69; *GA/LA Order* ¶ 49 n.174.

Here, AT&T has demonstrated no error of any kind, much less a patent one. AT&T’s primary challenge is to BellSouth’s estimates of various inputs necessary to determine the feature-related investment per line for a typical CLEC customer. *See AT&T Pitts Decl.* ¶ 18. As explained in detail in the reply affidavit of Daonne Caldwell, BellSouth necessarily had to make a series of assumptions to determine those inputs. Regardless of whether the assumptions that BellSouth made were the only possible ones, they were reasonable attempts to estimate forward-looking costs. As the Florida Commission has said with respect to BellSouth’s feature cost development: “The use of estimates is necessary in any modeling situation. The model may simulate the real world, but it is not the real world.” Final Order on Rates for Unbundled Network Elements Provided by BellSouth at 259, *Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP (FPSC May 25, 2001).

BellSouth made its estimates assuming, consistent with this Commission’s rules, that CLECs have access to and can use every feature offered in the end-office switch. BellSouth cannot determine how many or what features a CLEC’s customers will subscribe to and use. *See BellSouth Caldwell Reply Aff.* ¶ 106. Furthermore, it is impossible to forecast how CLECs will market vertical features, *i.e.*, what type of packages will be offered. Accordingly, BellSouth sought to obtain *average* usage data for a wide variety of features. *See id.* To do that, BellSouth

reviewed 56 *representative* features. *See id.* ¶ 107. The 56 features were representative because they reflect a mix of features requiring different switch components. *See id.* For example, some only required the processor, some the processor plus hardware, and some the processor plus signaling. Additionally, these 56 include some of the most common features purchased. *See id.* This set of 56 features, moreover, is a substantial portion of the 200 unique features that are available. *See id.* ¶ 108.

BellSouth also needed to determine average usage of features, and BellSouth used a reasonable source for that as well. Usage-related inputs were derived from BellSouth's retail studies, which support an average use of four features per line. *See id.* ¶ 110. Finally, in incorporating the feature charge into the port rate, BellSouth reasonably relied on relevant retail data on the percentage of customers that take features. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 33 & Exh. JAR/CKC-5.

AT&T's critiques of BellSouth's specific decisions in determining these inputs do not demonstrate a patent TELRIC error. First, it is not correct to say, as AT&T's declarant Pitts does (¶ 19), that BellSouth assumes 4.5 feature calls in the busy hour. In fact, BellSouth's methodology does not reflect feature "calls," but rather feature activations, feature deactivations, and feature screen list edit sessions; *i.e.*, any customer feature-related request that requires an action by the switch. *See BellSouth Caldwell Reply Aff.* ¶ 111. This is reasonable because it reflects both originating features, such as three-way calling and speed dialing, and terminating features, such as call waiting, hunting, and CLASS features such as Caller ID. *See id.* Given the variety of features in common use, it is not hard to see how a single phone call can invoke two or more features. *See id.* Many features, moreover, have a natural pairing such that, when one is used, the other is also used (for instance, Caller ID and anonymous call rejection). *See id.*

Notably, AT&T does not suggest a comprehensive alternative methodology. The only component for which AT&T offers a specific alternative involves its proposal to use feature penetration rates. While BellSouth does not agree with AT&T that it is appropriate to consider feature penetration in this analysis, AT&T's proposal to do that (*see AT&T Pitts Decl.* ¶¶ 19-20) only confirms the reasonableness of BellSouth's attempt to estimate forward-looking costs here. Exhibit DDC-9 to the reply affidavit of Daonne Caldwell incorporates the penetration rates for Georgia referenced in Ms. Pitts's declaration, updated to consider the penetrations of features currently offered in combination with other features. Instead of 4.5 processor activations during the busy hour that BellSouth estimates, this analysis resulted in 3.74 feature requests; instead of 1.6 line-related requests, 1.18; instead of 1.30 hardware-related requests, 2.11; and instead of 0.4 SS7-related activations, 1.23. *See BellSouth Caldwell Reply Aff.* ¶ 114. Because hardware requests constitute the most significant portion of the feature costs, if Ms. Pitts's approach was adopted, BellSouth's costs would have been higher. *See id.*

As demonstrated in detail in Daonne Caldwell's reply affidavit (¶¶ 115-121), AT&T's other specific feature arguments – which likewise were not presented to these state commissions – are also incorrect.

The reasonableness of BellSouth's feature charges is also confirmed by a comparison between those charges and current New York rates, about which AT&T has claimed to be "elated."⁹ As explained in the attached reply affidavit of Daonne Caldwell, BellSouth's feature charges in Alabama, Mississippi, and South Carolina are all comparable to the ones in New

⁹ Kenneth Lovett, *State Ruling May Bring Down Home-Phone Costs*, N.Y. Post, Jan. 24, 2002, at 19 (quoting AT&T spokesman Jeff Roberts).

York. *See BellSouth Caldwell Reply Aff.* ¶¶ 122-126; *cf. GA/LA Order* ¶ 25 n.87 (noting that BellSouth rates in Georgia and Louisiana compared favorably to New York rates).

At the end of the day, AT&T does nothing to show that BellSouth's methodology is not reasonable, or that another specific approach is required to comply with TELRIC. Perhaps that is why it chose not to raise these issues before the state commissions. Its claim should be rejected.

DUF Rates. In challenging BellSouth's DUF rates – which are based on the same methodology approved for Georgia/Louisiana – AT&T and WorldCom again make arguments that are incorrect and, in almost all cases, were not raised before the states.

WorldCom claims that BellSouth is double-recovering DUF charges because they allegedly are already included in shared and common costs. *See WorldCom Frentrup Decl.* ¶ 24. That is incorrect. Just as in Georgia and Louisiana, BellSouth removed these directly identified costs from its shared and common costs. *See BellSouth Caldwell Reply Aff.* ¶ 42 & Exh. DDC-2 (providing the location of the relevant cost study files). Accordingly, this Commission should again reject this argument, just as it did in that case. *See GA/LA Order* ¶ 93; *see also BellSouth Caldwell Reply Aff.* ¶ 42 (citing state commission rejections of the same claim). Of course, WorldCom has recently admitted that its comments were based upon a review of *old* DUF rates in at least two of the states at issue (Alabama and South Carolina), which raises doubt about its assertions on this issue. *See* Letter from Keith L. Seat, WorldCom, to Marlene D. Dortch, Secretary, FCC, WC Docket 02-150 (FCC filed Aug. 1, 2002) (acknowledging that BellSouth's current rates are "significantly lower" than WorldCom had understood).

As with its switching arguments, AT&T raises a series of challenges that were never presented to the state commissions in these five states. *See BellSouth Caldwell Reply Aff.* ¶ 43.

AT&T's declarant, Steven Turner, argues that BellSouth failed to consider total demand, including BellSouth usage, in determining DUF costs. *See AT&T Turner Decl.* ¶¶ 26-30. That fact-based argument is not only new; it is also simply wrong. BellSouth's cost studies demonstrate which jobs have shared attributes and which jobs are dedicated for CLEC uses. *See BellSouth Caldwell Reply Aff.* ¶¶ 43-45. Accordingly, the "cost of the job in terms of both labor and computer resources is spread over the number of messages processed by that job. This is basic cost causation methodology and is in compliance with incremental cost principles." *Id.* ¶ 43.

Nor is AT&T's Mr. Turner correct in faulting the demand forecasts that BellSouth used. The DUF charges in all five states reflect current demand data consistent with the demand data used in the current Georgia cost proceeding and approved in the *GA/LA Order*. *See id.* ¶ 46.¹⁰

Mr. Turner's other arguments are similarly incorrect. There is no support for his contention that TELRIC principles somehow mandate a three-year recovery period for DUF costs. BellSouth, moreover, had a reasonable basis for choosing the recovery periods that it did. *See id.* ¶ 47. BellSouth did not repeat one-time system costs over several years but rather dealt reasonably with a modeling convention so that the BellSouth Cost Calculator will accurately reflect the ongoing annual costs associated with the initial system investment. *Id.* ¶¶ 48-50. BellSouth also followed accepted accounting principles in expensing certain costs, and properly accounted for development costs associated with the initial production of a magnetic tape for systems testing (which, in any event, account for 0.1% of the rate). *Id.* ¶¶ 51-52.

¹⁰ As the Commission is aware, BellSouth recently lowered DUF rates in North Carolina to reflect new demand data. The DUF charges in the other states reflected this current data prior to filing.

OSS Charges. WorldCom takes issue with BellSouth's nonrecurring charge for OSS development. *See WorldCom Comments* at 11-12. WorldCom argues that BellSouth's charges in these states are higher than in Georgia and Louisiana. *See id.*

Absent a TELRIC violation, such an argument demonstrates nothing. The Commission's precedent is abundantly clear on this point. As the Commission explained in its recent *Vermont Order*, "both the United States Court of Appeals for the District of Columbia Circuit and the Commission have recognized [that] 'application of TELRIC principles can result in different rates in different states.'" *Vermont Order* ¶ 26 (quoting *AT&T Corp. v. FCC*, 220 F.3d 607, 615 (D.C. Cir. 2000)). In the absence of a basic TELRIC violation or a clear error on a substantial factual issue, the Commission does not "proceed further to determine TELRIC compliance on the basis of comparisons with other states, including those that have section 271 approval. . . . We see no reason to do this as it undermines the importance of state-specific, independent analysis of rates for UNEs." *GA/LA Order* ¶ 24. Thus, the Commission does not "regard failure to meet a benchmark, by itself, as evidence that a state commission failed to reasonably apply TELRIC in setting UNE rates." *Id.* ¶ 25.

In addition to the fact that it has ignored the Commission's precedent on this key issue, WorldCom has improperly tried to compare the different recovery methods in the different states using completely unrealistic assumptions in order to create a false impression that the charges vary greatly. *See BellSouth Caldwell Reply Aff.* ¶ 54. Accordingly, the Commission cannot take these comparisons (which are, in any event, legally irrelevant) at face value. *See id.* ¶ 55 (providing an apples-to-apples comparison for the four states at issue here that used the same recovery method). WorldCom additionally disregards the fact that BellSouth also offers a

region-wide OSS rate of \$3.50 per LSR in its Standard Interconnection Agreement. *See Ruscilli/Cox Reply Aff.* ¶ 44. Numerous CLECs have taken advantage of that rate. *Id.*

The only alleged TELRIC error that WorldCom identifies in these OSS charges is a supposed double-counting of costs that are already included in BellSouth's shared and common costs. *WorldCom Comments* at 11-12. WorldCom is incorrect. As Daonne Caldwell explains in her reply affidavit, BellSouth's shared and common costs reflect the costs of legacy systems, not the costs of additional systems to serve CLECs. *See BellSouth Caldwell Reply Aff.* ¶¶ 59-60. Thus, as the Mississippi PSC said in rejecting this same argument, WorldCom is "simply wrong." Final Order at 27, *Generic Proceeding To Establish BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Elements and Services*, Docket No. 00-UA-999 (MPSC Oct. 12, 2001) (Application App. D – MS, Tab 9). The Kentucky PSC similarly noted that it "agree[d] with BellSouth" on this issue. *See Order* at 32, *Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements*, Admin. Case No. 382 (KPSC Dec. 18, 2001) (Application App. D – KY, Tab 17).

Multiple Scenarios/Loading Factors. WorldCom (at 14-16) raises two other claims – involving the use of different cost-study scenarios for stand-alone loops and loops combined with switch ports and the use of loading factors to calculate the cost of total installed investment – that, as it frankly acknowledges, were "considered" and squarely rejected in the Georgia/Louisiana proceeding. In fact, the Commission discussed these issues at significant length and thoroughly addressed all of WorldCom's claims. *See GA/LA Order* ¶¶ 35-64. Although WorldCom may "disagree[]" with the Commission's conclusion (*WorldCom Comments* at 14), that provides no basis for the Commission to reach a different result here. Indeed, the fact that all the relevant state commissions here, as well as this Commission and the

Georgia and Louisiana Commissions, have reached the same result, demonstrates that BellSouth's approach to these issues is reasonable and involves no basic TELRIC error. In any event, Daonne Caldwell again addresses WorldCom's arguments in her reply affidavit (¶¶ 10-40) and demonstrates that they are no more persuasive this time than when they were presented in the prior proceeding.

North Carolina Rates. AT&T claims that BellSouth's rates in North Carolina violate TELRIC. AT&T does not identify any methodological error in BellSouth's North Carolina cost studies (other than the invalid criticisms it levels at all of BellSouth's studies), nor does it claim that the NCUC made a clear factual mistake on a crucial issue. Instead, AT&T argues that BellSouth's North Carolina rates are allegedly based on "out-of-date" data. *AT&T Comments* at 39.

This is, again, an argument that was made and rejected in the Georgia/Louisiana proceeding. In that case, AT&T similarly asserted that BellSouth's Georgia cost studies, which are of the same vintage as the North Carolina studies, were impermissibly dated, and moreover, that BellSouth had filed new studies with the Georgia PSC that suggested that rates for some UNEs should be lowered. *See GA/LA Order* ¶ 95 & n.316. The Commission rejected that claim: "[A]s a legal matter, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself. . . . We doubt that Congress, which directed us to complete our section 271 review process within 90 days, intended to burden incumbent LECs, the states, or the Commission with the additional delays and uncertainties that would result from such a requirement." *Id.* ¶ 96. The Commission further quoted the D.C. Circuit's rejection of the same argument: "If new [cost] information automatically required rejection of section 271

applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change.” *Id.* (quoting *AT&T*, 220 F.3d at 617).

AT&T inexplicably fails to mention this directly relevant – indeed, dispositive – precedent. Moreover, and in any event, its assertions about changes in costs since the North Carolina studies were filed are unsupported and incorrect. *See BellSouth Caldwell Reply Aff.* ¶¶ 5-9. Its claim should be rejected.

South Carolina Deaveraging Methodology. WorldCom briefly challenges the deaveraging methodology used by the SCPSC. *WorldCom Comments* at 13; *WorldCom Frentrup Decl.* ¶¶ 7, 30-31. The SCPSC’s methodology, which is the same one that was used in Georgia, is fully consistent with this Commission’s rules.

Rule 51.507(f) requires state commissions to “establish different rates . . . in at least three defined geographic areas within the state to reflect geographic cost differences.” 47 C.F.R. § 51.507(f). The rule further provides that “state commissions may use existing density-related zone pricing plans described in § 69.123 of this chapter, *or other such cost-related zone plans established pursuant to state law.*” *Id.* § 51.507(f)(1) (emphasis added).

That is exactly what the SCPSC has done. When the Commission’s deaveraging rule went into effect, BellSouth, WorldCom, and AT&T filed a joint stipulation with the SCPSC in which they agreed to deaverage UNE rates based on BellSouth’s existing retail rate groups on an interim basis. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 29. No CLEC provided a competing plan or otherwise objected. *See id.* These same parties also filed a similar interim deaveraging plan in Georgia, and the Georgia PSC expressly concluded that the result was reasonable and should be adopted for purposes of sections 251 and 252. *Id.*

During the South Carolina pricing proceeding, BellSouth again proposed that BellSouth's existing retail rate groups be used as the basis for deaveraging. BellSouth explained that existing rate groups reflect cost differences and thus are cost-related. *Id.* ¶ 27 & Table 1. Again, no CLEC suggested an alternative method of deaveraging. *Id.* ¶ 31.

The SCPSC then approved BellSouth's proposal as consistent with this Commission's rules. Order on UNE Rates at 6-8, *Generic Proceeding to Establish Prices for BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Services*, Docket No. 2001-65-C, Order No. 2001-1089 (SCPSC Nov. 30, 2001) (Application App. D – SC, Tab 19). Because, as the reply affidavit of John Ruscilli and Cynthia Cox demonstrates, BellSouth's rate groups do reflect cost differences, that judgment was entirely appropriate as a legal matter. *See BellSouth Ruscilli/Cox Reply Aff.* ¶¶ 27-28. That is especially the case because no party provided any other proposal. It is also worth noting that, if BellSouth deaveraged in South Carolina using the same methodology as in North Carolina, the results would be little different. *See id.* ¶ 30.

IV. COMMENTERS' OTHER ARGUMENTS DO NOT DEMONSTRATE THAT BELL SOUTH HAS FAILED TO MEET THE CHECKLIST OR TO SATISFY SECTION 272

A. Interconnection

BellSouth meets the requirements of Checklist Item 1. BellSouth provides interconnection at any technically feasible point; that is at least equal in quality to what it provides to itself; and that is available at TELRIC rates. *See GA/LA Order App. D*, ¶ 17; *Application* at 28-39. All five state commissions have confirmed BellSouth's statutory compliance. *APSC 271 Order* at 81 (“[W]e find BellSouth compliant with this checklist item in all respects.”); *KPSC 271 Order* at 11, 13, 15 (“BellSouth meets its requirement to interconnect at any technically feasible point” and “the collocation arrangements provided by BellSouth

comply with Section 251”); *MPSC 271 Order* at 24 (the “significant degree of commercial usage” in Mississippi “indicates that CLECs can and do interconnect with BellSouth’s network”); *id.* at 25 (“BellSouth’s evidence further demonstrates that it provides access to interconnection trunks in a manner equivalent to that which it provides to itself”); *NCUC Order and Advisory Opinion* at 44 (“BellSouth is providing or generally offering interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) and is in compliance with the requirements of Checklist Item 1.”); *SCPSC 271 Order* at 35, 40 (noting that commercial usage and performance data demonstrate that CLECs can interconnect and that “BellSouth provides nondiscriminatory access to collocation”).

AT&T and KMC/NuVox challenge BellSouth’s checklist compliance. Their arguments, however, do not implicate BellSouth’s statutory compliance, but rather involve disputes about their rights under particular interconnection agreements.

KMC/NuVox thus concede that BellSouth has TELRIC rates for local interconnection. *See KMC/NuVox Comments* at 5. They nevertheless argue that, in some instances, they are being improperly charged what they claim are special access rates. *See id.* Their argument, accordingly, is a straightforward billing dispute about their rights under a particular agreement. *See BellSouth Ruscilli/Cox Reply Aff.* ¶¶ 6-14 (discussing in detail the specifics of the parties’ disagreement). Such disputes are not relevant to checklist compliance. They involve no alleged “per se violations of self-executing requirements of the Act,” and the 1996 Act leaves such disputes for resolution, not in a section 271 forum, but before the state commissions:

The 1996 Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law. . . . [S]ection 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions.

Texas Order ¶¶ 23, 383 (footnotes omitted); *see also, e.g., Rhode Island Order App. D*, ¶ 22; *Massachusetts Order* ¶¶ 10, 203.

The same analysis applies to AT&T's claim. AT&T's assertion that it is entitled to require BellSouth to recognize a LATA-wide local calling area for purposes of interconnection is grounded in its interpretation of its interconnection agreements with BellSouth. AT&T has long argued that the language of its agreements gives it that right; BellSouth disagrees, with substantial justification. *See BellSouth Ruscilli/Cox Reply Aff.* ¶¶ 15-20.

Whatever the outcome of this disagreement, it does not implicate section 271. Indeed, AT&T's Ms. Berger concedes that AT&T's claim is that BellSouth allegedly "refuses to perform according to the terms of its interconnection agreement." *AT&T Berger Decl.* ¶ 15 (emphasis added). In any event, the Wireline Competition Bureau has recently established that, contrary to AT&T's belief, CLECs do not have a right to LATA-wide local calling. *See Memorandum Opinion and Order, Petition of WorldCom, Inc., et al., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, *et al.*, DA 02-1731, ¶¶ 546-549 (Chief, WCB rel. July 17, 2002); *BellSouth Ruscilli/Cox Reply Aff.* ¶ 21.

B. Loops

In its Application, BellSouth demonstrated that it provides nondiscriminatory access to unbundled loops and related services in a manner that provides CLECs a meaningful opportunity to compete in each of the five states. Few CLECs have raised any question concerning BellSouth's compliance with its obligations under Checklist Item 4, and those that have done so largely repeat the same arguments that this Commission has considered and rejected on

numerous occasions. As the Commission has stated time and time again, anecdotal evidence of alleged performance disparities cannot undercut “objective performance data that demonstrate that [BellSouth] satisfies the statutory nondiscrimination requirement.” *Texas Order* ¶ 50; *see also KS/OK Order* ¶¶ 28-29; *Massachusetts Order* ¶ 11.

High-Capacity Loops. As BellSouth demonstrated in its Application, comprehensive performance data establish that BellSouth provides nondiscriminatory access to DS1 loops. CLECs attack some isolated aspects of BellSouth’s performance in provisioning and maintaining high-quality DS1 facilities, but they distort the evidence and ignore the substance of BellSouth’s record. As the Alabama, Kentucky, Mississippi, North Carolina, and South Carolina state commissions have each concluded, BellSouth’s performance fully complies with the requirements of Checklist Item 4.

KMC contends that BellSouth’s performance in provisioning DS1 facilities suffers from systemic disparities, and that KMC has suffered competitive harm as a direct result. *See KMC/NuVox Comments* at 9-10. But as Alfonso Varner demonstrates in his reply affidavit, the record tells a markedly different story. In the four states in which KMC has ordered high-capacity loops – Alabama, Mississippi, North Carolina, and South Carolina – KMC has uniformly received high-quality facilities in a timely manner. *See Varner Reply Aff.* ¶¶ 124-125. Between January and April 2002, BellSouth made nearly all of its installation appointments for KMC. *Id.* During that same time period, KMC reported trouble within 30 days on an extremely low percentage of its DS1 loop orders. *Id.* Given this stellar performance in “the *only* segment that matters to KMC,” *KMC/NuVox Comments* at 9, KMC’s claim that it has somehow been denied a meaningful opportunity to compete and “may eventually be forced to exit the market,” *id.* at 10, is simply wrong.

Nor is there any merit to the KMC/NuVox claim that BellSouth assigns high-capacity loop facilities in a discriminatory fashion. *See KMC/NuVox Comments* at 11. BellSouth's Loop Facilities Assignment and Control System ("LFACS"), Address and Facilities Inventory Group ("AFIG"), and Service Assignment Center ("SAC") assign loops without regard to the identity of the requesting carrier. *BellSouth Milner Reply Aff.* ¶ 10 (Reply App. Tab E). If the requested loop facilities are available, LFACS will automatically assign the required facilities and place the CLEC's order in "pending" status. *See id.* To the extent that the requested facilities are not available, LFACS and AFIG will send the order to the SAC, where it will be filled on a "first-come, first-served" basis. *See id.* Wholesale and retail orders are treated in the exact same fashion by the SAC and AFIG. *See id.*

US LEC's criticism of BellSouth's high-capacity loop performance is equally unfounded. Because US LEC does not generally order unbundled high-capacity loops, its comments focus almost entirely on BellSouth's alleged performance with respect to special access circuits. But as BellSouth explained when US LEC made this same argument in challenging BellSouth's application for interLATA authority in Georgia and Louisiana, the Commission has held that it does "not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance." *Texas Order* ¶ 335; *see also New York Order* ¶ 340. Accordingly, US LEC's comments have no relevance to BellSouth's compliance with Checklist Item 4.

xDSL-Capable Loops. BellSouth additionally provides nondiscriminatory access to xDSL-capable loops and related services in full compliance with its obligations under Checklist Item 4. As BellSouth explained in its Application, CLECs receive loop makeup information in substantially the same time and manner as BellSouth, and CLECs have access to the exact same

information that BellSouth utilizes to determine whether loops are suitable for DSL service. BellSouth installs xDSL-capable loops in a timely manner, and routinely meets the parity standard for installation appointments. BellSouth additionally meets the parity standard for reported troubles, as well as for maintenance and repair. *See Application* at 112-13.

Ignoring BellSouth's record of excellent performance, Covad raises issues that have no competitive impact. For example, Covad contends that BellSouth routinely fails to provide loop demarcation information for the Unbundled Copper Loops – Non-Designed ("UCL-ND"). *See Covad Comments* at 24-25. In provisioning a UCL-ND loop, however, BellSouth provides the ordering CLEC all of the demarcation information in BellSouth's possession. *See BellSouth Milner Reply Aff.* ¶ 3; *BellSouth Ainsworth Reply Aff.* ¶ 41. Unlike several of its other loop offerings, the UCL-ND is primarily a non-dispatch product. In other words, BellSouth does not routinely dispatch a technician in the course of provisioning a UCL-ND order, and therefore does not tag UCL-ND orders until the first maintenance visit. *See BellSouth Milner Reply Aff.* ¶¶ 3-4; *BellSouth Ainsworth Reply Aff.* ¶ 41. While Covad now complains about the lack of a tag, the fact remains that BellSouth developed the UCL-ND offering in response to Covad's specific request for a cheaper unbundled copper loop. *BellSouth Milner Reply Aff.* ¶ 4. And the UCL-ND offering is cheaper precisely because it does not require BellSouth to dispatch a technician during the provisioning process. *Id.* Nevertheless, BellSouth has voluntarily initiated a region-wide trial in which it will dispatch technicians to tag UCL-ND loops with demarcation information. *See id.* ¶ 5; *BellSouth Ainsworth Reply Aff.* ¶ 43. This service should fully address Covad's complaint. Indeed, when BellSouth informed Covad of the trial, Covad responded that it would initiate UCL-ND ordering throughout BellSouth's region. *See id.*

Covad additionally asserts that BellSouth fails properly to provision UCL-ND loops, pointing to problems it allegedly faced in January 2002. *See Covad Comments* at 24. When BellSouth reviewed all of Covad's UCL-ND orders for January through March 2002 in all five states, BellSouth discovered that its performance was excellent. *See BellSouth Varner Reply Aff.* ¶ 117. The record here is simply inconsistent with Covad's claims.

Covad's remaining attacks on BellSouth's performance in the provisioning and repair of UCL-ND loops are similarly without merit. While Covad contends that BellSouth fails to install UCL-ND loops on a timely basis, *see Covad Comments* at 27, the record establishes that BellSouth performed well. *See BellSouth Varner Reply Aff.* ¶ 120. Similarly, while Covad contends that BellSouth provides its retail customers faster repair services on average than it provides for Covad's UCL-ND orders, *see Covad Comments* at 29-30, Covad fails to note the differences in sample size and the effect even a single "miss" can have on the reported performance for the CLEC product. *See BellSouth Varner Reply Aff.* ¶ 122.

Covad's discussion of line-shared loops is also unpersuasive. As Keith Milner explains in his reply affidavit (¶ 7), the line-sharing collaborative developed processes and procedures for the ordering and provisioning of line-shared loops. Under those agreed-upon procedures, CLECs (including Covad) are responsible for obtaining loop makeup information in order to determine whether the facilities serving a prospective customer are capable of supporting ADSL service. *See BellSouth Milner Reply Aff.* ¶ 7. Having chosen not to follow these established processes prior to submitting orders, Covad cannot legitimately complain when its line-shared loop orders subsequently require loop conditioning. While BellSouth's central office technicians test the integrity of the wire and ensure that they provisioned a working connection with electrical

continuity, they have no responsibility for determining whether a particular loop can support the CLEC's desired use. *See id.* ¶ 8.

C. Section 272

AT&T is the only party that challenges BellSouth's showing that it has complied, and will continue to comply, with section 272 in all respects. AT&T bases its argument on BellSouth's filing of a switched access tariff that allegedly "unlawfully discriminate in favor of [BellSouth's] long-distance affiliate, BellSouth Long Distance, Inc." *AT&T Comments* at 44.

AT&T's claim is incorrect. As discussed in the reply affidavit of John Ruscilli and Cynthia Cox, BellSouth Long Distance is not even eligible to take service under the tariff that AT&T identifies. The tariff at issue is a contract tariff that arises out of negotiations between BellSouth and an unaffiliated IXC. The tariff is open to similarly situated parties for a limited period after it is filed, and it requires the customer that takes service under the tariff to be a BellSouth switched access customer for 18 months. BellSouth Long Distance obviously does not meet those requirements. *See Ruscilli/Cox Reply Aff.* ¶¶ 75-76. Because BellSouth Long Distance is not even eligible for this particular tariff, there can be no claim that the tariff violates section 272, and, absent a section 272 issue, there is simply nothing to implicate section 271.

V. BELLSOUTH'S ENTRY INTO THE INTERLATA SERVICES MARKET IN ALL FIVE STATES WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

BellSouth demonstrated in its Application that there is overwhelming evidence, including the repeated findings of this Commission itself, that section 271 approval vastly accelerates both local and long-distance competition. *See Application* at 137-43. A recent empirical study concludes that BOC entry in New York and Texas resulted in a substantial reduction – from 9%